



**INDIANA COURT OF APPEALS
ORAL ARGUMENT AT A GLANCE
LAWRENCE NORTH HIGH SCHOOL**

D.L. v. STATE OF INDIANA

Appeal from:

Marion Superior Court / Juvenile
Division
The Honorable Danielle Gregory,
Magistrate

Oral Argument:

Thursday, November 8, 2007
1:30 p.m.—2:10 p.m.
20 minutes each side

JUVENILE LAW

WAIVER

Did D.L. waive his claim on appeal by failing to lodge a contemporaneous objection to the disputed evidence?

MERITS

Did the trial court abuse its discretion in admitting evidence procured as a result of a pat-down search of D.L. which was justified on the basis of being necessary for purposes of determining whether he was in possession of his identification card?

CASE SYNOPSIS

**Facts and Procedural
History**

On September 14, 2006, Indianapolis Public Schools Police Officer Sheila Lambert found D.L. and two other individuals in the second-floor hallway of Treadwell Hall at Arsenal Technical High School during a non-passing period. Officer Lambert asked D.L. and his companions if they had identification cards, passes, or schedules, and they responded that they did not. At that time, Officer Lambert conducted a pat-down search of D.L. for his identification card. According to Officer Lambert, immediately after she began patting D.L. down, he put something down his pants. Officer Lambert handcuffed D.L. and brought him

to the police office, where Officer Jeffrey Riley conducted a search. During this search, Officer Riley shook D.L.'s pant legs, whereupon a clear plastic bag containing "dry, green leafy vegetation" fell to the floor. The vegetation inside of the bag was later determined to be 1.03 grams of marijuana.

Following the State's petition alleging D.L. to be a delinquent child, and D.L.'s motion to suppress, which was denied, the marijuana which fell from D.L.'s pant legs and a report showing a positive test for 1.03 grams of marijuana were introduced into evidence as State's Exhibits 1 and 2, over D.L.'s objection, as part of the State's case alleging delinquency at the denial hearing.

D.L. v. State of Indiana

CASE SYNOPSIS



D.L. did not object at the hearing to testimony by Officers Lambert and Riley, although he renewed his motion to suppress following Officer Riley's testimony.

Parties' Arguments

I. Waiver

The State first argues that D.L. waived his claim on appeal by failing to lodge a contemporaneous objection to the disputed evidence at the hearing. D.L. disagrees, claiming he raised a clear objection under the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution immediately following the State's motion to admit Exhibits 1 and 2 into evidence.

II. The Merits

Under *New Jersey v. T.L.O.*, 469 U.S. 325, 341-42 (1985), a search of a student by a school official is permissible if it is reasonable under all of the circumstances, as determined by the following two part-test: (1) the action must be justified at its inception; and (2) the search as conducted must be reasonably related in scope to the circumstances which justified the interference in the first place. A search by a school official is justified at its inception when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or school rules. *Id.* The search will be permissible in scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction. *Id.*

D.L. argues that Officer Lambert's

search of him was not justified at its inception. D.L. points out that at the time Officer Lambert encountered him, he was not displaying his school identification as required, and that upon being asked, he admitted to Officer Lambert that he did not have the required identification. D.L. further points out that Officer Lambert articulated no concerns regarding officer safety, nor did she observe any furtive movements, suspicious odors, or other incriminating behavior on his part. It is D.L.'s contention that Officer Lambert's search, for the alleged purpose of finding his identification card, was unreasonable because there was no reason to suspect that a search would turn up any further evidence of a rule violation.

The State argues in response that Officer Lambert's search was justified at its inception because D.L.'s failure to produce an identification card meant he could not be conclusively identified. According to the State, Officer Lambert was encountering a situation that could not be resolved without identifying the parties involved: if the individuals were students, they were in violation of school policy; if they were not students, they were possibly in violation of laws against trespassing on school grounds. It is the State's position that the necessary means by which Officer Lambert could address and resolve the situation was to search the individuals to look for their identification, providing reasonable justification for the search.

TODAY'S PANEL OF JUDGES

Hon. John G. Baker (Monroe County), Presiding

- Judge of the Court of Appeals since June 1989
- Chief Judge since March 2007

John G. Baker is originally from Aurora in Dearborn County and lived in Monroe County for 35 years. Since June 1989, he has served as a Judge of the Indiana Court of Appeals representing the First District and has authored more than 3,000 majority opinions. Prior to becoming an appellate court judge, he served as county court and superior court judge for 13½ years in Bloomington, disposing of more than 15,000 cases.

Judge Baker graduated from Culver Military Academy and received his A.B. degree from Indiana University in 1968 in History and his J.D. from the Indiana University School of Law — Bloomington in 1971. He received his LLM in Judicial Process from the University of Virginia in 1995. Before assuming the trial bench, he was a partner in the firm of Baker, Barnhart and Andrews in Bloomington and was a Captain in the U.S. Army Reserves.

Since 1980, Judge Baker has taught as an adjunct professor at Indiana University's School of Public and Environmental Affairs and since 2004 at the School of

Law in Bloomington. In addition, Judge Baker has served on the faculties of the Indiana Judicial College, Indiana Continuing Legal Education Forum, and the National Institute of Trial Advocacy.

His professional associations include the American, Indiana State, Monroe County and Indianapolis Bar Associations. For the latter, he served as Vice-President in 1995. He has been a member of the Indiana Judges Association's Board of Managers continually since 1979 and served as its President from January of 1987 through June of 1989.

Judge Baker has been active in community and civic affairs as well. In addition to his church, YMCA, and other similar organizations, Judge Baker has been active in Boy Scouts of America since his youth and was awarded the rank of Eagle Scout.

Judge Baker was retained on the Court by election in 1992 and 2002. He and his wife have five children and — so far — four grandchildren.

The Court of Appeals hears oral argument at venues across the state to enable Hoosiers to learn about the judicial branch.

This initiative began statewide just prior to the Court's centennial in 2001.

Today's oral argument is the 197th case the Court of Appeals has heard "on the road" since early 2000.

Sites for traveling oral arguments are often law schools, colleges, high schools, and county courthouses.

TODAY'S PANEL OF JUDGES

Hon. Edward W. Najam, Jr. (Monroe County)

- Judge of the Court of Appeals since December 1992

Edward W. Najam, Jr., of Bloomington, Monroe County, was appointed to the Court of Appeals by Governor Evan Bayh in 1992 and was retained by the electorate in 1996 and 2006.

Judge Najam graduated from the Indiana University High School in Bloomington, where he grew up, and attended Indiana University at Bloomington. At I.U. he earned a B. A. in political science, with highest distinction, in 1969, was elected to Phi Beta Kappa, and was elected Student Body President. Judge Najam earned his J.D. from Harvard Law School in 1972.

After admission to the Bar, he was Administrative Assistant to the Mayor of Bloomington for two years and an attorney in private practice for eighteen years. He served as a member of the Civil Justice Reform Act Advisory Group and the Local Rules Advisory Committee of the United States District Court for the Southern District of Indiana. He was a member of the Bloomington Rotary Club, the Greater Bloomington Chamber of Commerce, and President of the Monroe County Family YMCA Board of Directors.

As Chair of the Appellate Practice Section of the Indiana State Bar Association, he initiated the

Appellate Rules Project, which culminated in a complete revision of the Indiana Rules of Appellate Procedure. In 2001, he organized and co-chaired "Caught in the Middle: A National Symposium on the Role of State Intermediate Appellate Courts," attended by judges from twenty-two states, the first such national conference. He has served as a member of the Indiana Supreme Court Committee on Rules of Practice and Procedure (1995 to 2005) and the Indiana Supreme Court Judicial Technology and Automation Committee (1999 to 2005), and he represents the judiciary on the Indiana Department of Homeland Security Counter-Terrorism and Security Council.

Judge Najam is a member of the American, Indiana, and Monroe County Bar Associations, a graduate of the Indiana Graduate Program for Judges, a member of the Indiana University School of Law – Bloomington Board of Visitors, a Fellow of the Indiana and Indianapolis Bar Foundations, a member of Phi Delta Phi legal fraternity, and an Eagle Scout.

The 15 judges of the Indiana Court of Appeals issue more than 2,500 written opinions each year.

The Court of Appeals hears cases only in three-judge panels. Panels rotate three times per year. Cases are randomly assigned.



TODAY'S PANEL OF JUDGES

Hon. Cale J. Bradford (Marion County)

- Judge of the Court of Appeals since August 2007



Cale J. Bradford was appointed to the Court of Appeals by Governor Mitch Daniels and took his seat on August 1, 2007.

Prior to his elevation to the Court of Appeals, Judge Bradford served for more than 10 years as Judge of the Marion Superior Court, seven years in the criminal division and three in the civil division. He was twice elected presiding judge by his colleagues.

During this tenure, Judge Bradford chaired the Marion County Criminal Justice Planning Council, a group of local elected and appointed officials who recommended ways to improve the county's response to criminal justice problems, including jail overcrowding, staffing, and budget issues. His efforts led to the end of 30 years of federal oversight of the Marion County Jail and to security improvements at the county's Juvenile Detention Center.

Before joining the bench, Judge Bradford served in the Marion County Prosecutor's Office for two years, overseeing a staff of more than 100 attorneys. For five years, he was an Assistant United States Attorney for the Southern District of Indiana, prosecuting major felony drug trafficking cases. He engaged in the private practice of law from 1986 to 1991, and served as both a deputy prosecutor and public defender during his career.

A native of Indianapolis, Judge Bradford received a B.A. in labor relations and personnel management from Indiana University-Bloomington in 1982 and his J.D. from Indiana University-Indianapolis in 1986. He is the Court of Appeals' liaison to the Indiana Judges Criminal Instructions Committee, which provides guidance to judges on jury instructions in criminal cases, and a former member of both the Indiana Judges Criminal Policy Committee and the Board of Directors of the Indiana State Judicial Conference. He is a Distinguished Fellow of the Indianapolis Bar Association and has taught ICLEF seminars on trial practice for more than 10 years. From 2005 to 2007, Judge Bradford hosted "Off the Bench with Judge Cale Bradford," a legal commentary program on Marion County's government access network. He also served on the Judicial Technology and Automation Committee (JTAC), helping to draft the state judiciary's policies on technology and electronic case management.

Judge Bradford is a former director of Indianapolis's John P. Craine House, a residential alternative to incarceration for women offenders with pre-school-aged children. He is a member of the Lawrence Youth Football League Advisory Board of Directors and the Lawrence Men's Soccer Booster Club. He and his wife, a full-day kindergarten teacher, have five children.

ATTORNEYS FOR THE PARTIES

For Appellant, D.L.:

Elizabeth A. Gabig
Marion County Public Defender Agency
Indianapolis



Elizabeth Gabig, an Indianapolis native, began her legal career with the Marion County Public Defender Agency. She worked first as a trial attorney and spent time representing both adult and juvenile clients and now works for the Public Defender Agency as an appellate attorney.

Ms. Gabig attended Indiana University in Bloomington with a major in Comparative Literature and a focus in Film Studies. She graduated from Bloomington's Indiana University School of Law in 2001. When she's not practicing law, Ms. Gabig enjoys teaching Kundalini yoga and meditation.

For Appellee, State of Indiana:

Scott Barnhart
Deputy Attorney General
Indianapolis

Scott Barnhart was born in Evansville and grew up in Newburgh. Mr. Barnhart attended the Indiana University Kelley School of Business and received his B.S. with majors in Operations Management and Management. Following college, he spent a year working in the Americorps Service Program. As an Americorps Volunteer, his service primarily involved working with residents of a local housing authority and various educational programs for children.

Mr. Barnhart enrolled at the

University of Toledo, College of Law. While attending law school, he served as a law clerk or legal intern for the Office of the Indiana Attorney General, the Wood County, Ohio, Prosecutor, and the Ohio Sixth District Court of Appeals. Mr. Barnhart graduated with Honors from the College of Law, passed the Indiana bar exam, and accepted a position as a Deputy Attorney General (DAG) in the appeals division. His primary responsibilities as a DAG include non-capital criminal appellate litigation in the Indiana Court of Appeals and the Indiana Supreme Court.